

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

JOHN K. GOODROW,

Plaintiff,

v.

Civil Action No. 3:11-cv-020-MHL

**FRIEDMAN & MACFADYEN, P.A.,
et al.,**

Defendants.

LaTONYA BANKS,

Plaintiff,

v.

Civil Action No. 3:11-cv-614-JRS

**FRIEDMAN & MACFADYEN, P.A.,
et al.,**

Defendants.

ALLEN CHATTER,

Plaintiff,

v.

Civil Action No. 3:11-cv-613-JRS

**FRIEDMAN & MACFADYEN, P.A.,
et al.,**

Defendants.

LAUREL BUEL, et al.,

Plaintiffs,

v.

Civil Action No. 3:11-cv-716-JRS

**FRIEDMAN & MACFADYEN, P.A.,
et al.,**

Defendants.

MICHELE McBETH,

Plaintiff,

v.

Civil Action No. 3:11-cv -479-JRS

**FRIEDMAN & MACFADYEN, P.A.,
et al.,**

Defendants.

**ADAM MBUNDURE,
et al.,**

Plaintiff,

v.

Civil Action No. 3:11-cv-489-JRS

FRIEDMAN & MACFADYEN, P.A.,

Defendants.

**JAMES SAN MATEO,
et al.,**

Plaintiff,

v.

Civil Action No. 3:11-CV-840-JRS

FRIEDMAN & MACFADYEN, P.A.,

Defendants.

**PLAINTIFFS' MEMORANDUM IN
RESPONSE TO (Docket No. 73), DEFENDANTS' MOTION TO STAY
PLAINTIFFS' MOTION TO CONSOLIDATE**

COME NOW the Plaintiffs, by counsel, and for their response to Defendants' Motion to Stay Plaintiffs' Motion to Consolidate, they state as follows:

Defendants' ask the Court to "stay all briefing, oral arguments and rulings" upon Plaintiffs' pending Motion to Consolidate until after the Court's decision as to the also pending Rule 12(b)(6) motions prosecuted by defendants against the Amended Complaints filed by Plaintiffs LaTonya Banks and Allen Chatter. Plaintiffs agree in part and disagree in part.

As raised by Plaintiffs counsel in the telephonic argument on Defendants' previous Motion for Leave to file briefs of 50 pages, Defendants are attempting to use the related and pseudo-consolidated nature of these cases to improper procedural advantage. While opposing Plaintiffs effort to have the Court treat the cases as a single unit, Defendants now attempt to benefit from a piecemeal-consolidated treatment of the cases. When it benefits the Defendants, they ask that the cases be handled in a unified fashion. Such approach should not be fairly countenanced.

The motion to stay also fails to justify the manufacturing of a staged or staggered process by which Defendants would be able to alter and develop – evolve – their motions practice based on their read of this Court's otherwise simultaneous decisions in the case. If the case proceeds, as under the Federal Rules, Defendants are free to oppose the filing of the Amended Complaints, as they have, based on futility. And then if unsuccessful, to file a Rule 12(b)(6) motion when the amended complaints are thereafter filed. But they are not content with these already duplicative process rights. Defendants ask for a third posture. And in fact under their reasoning, they could just as well ask the Court to consider the motions in each case one case at a time, trying nine times to find a Rule 12(b)(6) argument that can stick. And yet, Defendants' brief offers no basis in the rules or by basic fairness for such request. The motion to consolidate is fully briefed. It should be argued during the same hearing as argument is received on the other pending motions.

However, Plaintiffs do not object to the Court waiting to render its decision on the Motion to Consolidate until the Court itself has determined the ‘lay of the land’ after disposing of the Rule 12(b)(6) motions and the oppositions to the Motions for Leave to file the Amended Complaints. For example, if the Court finds that all claims other than one individual action unique to one Plaintiff survived – not a probable outcome – then consolidation would make little sense.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I certify that on October 26, 2012, I will electronically file the foregoing with the Clerk of

the Court using the CM/ECF system, which will send notification of such filing (NEF) to the following:

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